

CLIENT ALERT

June 2016

EXECUTIVE SUMMARY

AMENDMENT TO THE FOREIGN EXCHANGE MANAGEMENT (TRANSFER OR ISSUE OF SECURITY BY A PERSON RESIDENT OUTSIDE INDIA) REGULATIONS, 2000

The Reserve Bank of India has on May 25, 2016 amended the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 to permit, under the automatic route, deferment of purchase consideration and escrow mechanism in share purchase transactions involving foreign investment route for a period of eighteen months. Under the earlier regime, deferment of purchase consideration was not permitted and escrow mechanism was permitted (with several restrictions) under the automatic route for a maximum period of only six months.

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The Reserve Bank of India (“**RBI**”) recently issued a notification (“**Notification**”) amending the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) Regulations, 2000 (“**FEM 20**”). The Notification inserted a new Regulation 10A to the FEM 20 which stipulates that in a case where there is a transfer of shares between a resident buyer and a non-resident seller or vice-versa:

- 1) Then not more than twenty five per cent of the total consideration can be paid by the buyer on a deferred basis within a period not exceeding eighteen months from the date of the transfer agreement.
- 2) For the aforementioned purpose if it is agreed between the buyer and the seller, there can be an escrow arrangement between the parties for an amount of not more than twenty five per cent of the total consideration and for a period not exceeding eighteen months from the date of the transfer agreement.
- 3) If the total consideration is paid by the buyer to the seller, the seller may furnish an indemnity for an amount of not more than twenty five per cent of the total consideration for a period not exceeding eighteen months from the date of the payment of the full consideration.
- 4) This is however subject to the condition that the total consideration finally paid for the shares must be compliant with the applicable pricing guidelines.

For a detailed analysis of this topic, you may email us at delhi@jurislegal.org or call us on +91 11 4359 3370.